

If you have any comments or suggestions on the rules below please email [dor\\_ledtobacco\\_rulemaking@state.co.us](mailto:dor_ledtobacco_rulemaking@state.co.us) by the end of July 2022 so your comments can be reviewed and placed in the record. Thank you for your participation and input.

**Rule 7-100. Definitions.**

**Basis and Purpose.** The statutory authority for this rule includes, but is not limited to, sections 44-7-104(5), 18-13-121(5), 22-33-104(2)(b), 25-14-203(4), 44-3-103(50), and 44-30-103(18), C.R.S. The purpose of this rule is to ensure consistent application and interpretation of common terms within article 7 of title 44 and these rules.

- A. “Cigarette, tobacco product, or nicotine product” means (1) a product that contains nicotine or tobacco or is derived from tobacco and is intended to be ingested or inhaled by or applied to the skin of an individual; or (2) Any device that can be used to deliver tobacco or nicotine to the person inhaling from the device, including an electronic cigarette, cigar, cigarillo, or pipe. Notwithstanding any provision of this paragraph (A) to the contrary, “cigarette, tobacco product, or nicotine product” does not mean a product that the food and drug administration of the United States department of health and human services has approved as a tobacco use cessation product.
- B. “Cigar-Tobacco Bar” means a bar that, in the calendar year ending December 31, 2005, generated at least five percent or more of its total annual gross income or fifty thousand dollars in annual sales from the on-site sale of tobacco products and the rental of on-site humidors, not including any sales from vending machines. In any calendar year after December 31, 2005, a bar that fails to generate at least five percent of its total annual gross income or fifty thousand dollars in annual sales from the on-site sale of tobacco products and the rental of on-site humidors shall not be defined as a “cigar-tobacco bar” and shall not thereafter be included in the definition regardless of sales figures.
- C. “Compliance Check” means the Division or local authority engaging a person under twenty-one years of age to enter a retail location to attempt the purchase of cigarettes, tobacco products, or nicotine products for purposes of ensuring compliance with article 7 of title 44.
- D. “Division” means the State of Colorado Department of Revenue’s Liquor Enforcement Division, except as provided otherwise.
- E. “Inspection” means a procedure conducted by the Division or local authority to determine whether a retailer is operating in compliance with the requirements of article 7 of title 44, the rules promulgated thereunder, or any other applicable laws and regulations as they relate to the retailer’s sale of cigarettes, tobacco products, or nicotine products.
- F. “Licensed Gaming Establishment” means any premises licensed pursuant to article 30 of title 44 for the conduct of gaming.
- G. “Minor” means a person under twenty-one years of age.
- H. “On-premises Retailer” means a retailer that sells cigarettes, tobacco products, or nicotine products for consumers to use at the retail location.
- I. “Off-premises Retailer” means a retailer that sells cigarettes, tobacco products, or nicotine products for consumers to use at a location other than the retail location.

- J. “Retailer” means the owner or operator of business of any kind at a specific location that sells cigarettes, tobacco products, or nicotine products to a user or consumer.
- K. “School” means a public, parochial, or nonpublic school that provides a basic academic education in compliance with school attendance laws for students in grades one through twelve. “Basic academic education” means the sequential program of instruction provided by an independent or parochial school, and such program shall include, but not be limited to, communication skills of reading, writing, and speaking, mathematics, history, civics, literature, and science.
- L. “Sell” or “sale” means any of the following: To exchange, barter, or traffic in; to solicit or receive an order for; to keep or expose for sale; to deliver for value or in any way other than gratuitously; to peddle or to possess with intent to sell; to traffic in for any consideration promised or obtained, directly or indirectly.

#### **Rule 7-200. Petitions for Statements of Position and Declaratory Orders**

Basis and Purpose. The statutory authority for this rule includes, but is not limited to, subsections 44-7-104(5)(a) and 24-4-105(11), C.R.S. The purpose of this rule is to establish clear and comprehensive procedures and considerations required for a statement of position and/or a declaratory order.

- A. Statements of Position. Any person may petition the Division for a statement of position concerning the applicability to the petitioner of any provision of article 7 of title 44 or the rules promulgated pursuant thereto, contained in 1 CCR 203-1. **The petition must include the information set forth in paragraph (E)(1)-(E)(4) of this regulation.**
- B. Service of Petition for Statement of Position. A letter for petition for a statement of position shall be served on the Division by mailing or emailing such petition to the Division with a copy sent on the same date to the local licensing authority in the county or municipality where the petitioner’s retail location or proposed retail location is located, if applicable. Each petition for a statement of position shall contain a certification that the service requirements of this paragraph have been met.
- C. Time to Respond. The Division shall respond to a petition for a statement of position in writing setting forth its position and the reasons therefore within forty-five (45) days of receiving such petition **and set forth its position and the reasons therefore, or the grounds on which the Division declines to provide a statement of position pursuant to section 24-4-105(11), C.R.S., and/or paragraph (G) of this regulation.**
- D. Declaratory Orders. Any person who has petitioned the Division for a statement of position and who is dissatisfied with the statement of position may petition the Executive Director within forty-five (45) days of the issuance of the statement of position, or any amended statement of position, for a declaratory order pursuant to section 24-4-105(11), C.R.S. Any person who has not received a statement of position response within forty-five (45) days, may petition the Executive Director for a declaratory order pursuant to section 24-4-105(11), C.R.S. The parties to any petition for a declaratory order pursuant to this rule shall be the petitioner and the Division.
- E. Requirements for a Petition for Statement of Position or for a Petition for Declaratory Order. Each **petition for a statement of position or** petition for a declaratory order shall set forth the following:
  - 1. The name and address of the petitioner; whether the petitioner is licensed pursuant to the article 7 of title 44 and, if so, the type of license or permit and address of the retail location.
  - 2. The statute, rule, or order to which the petition relates.

3. A concise statement of all of the facts necessary to show the nature of the controversy or the uncertainty as to the applicability to the petitioner of the statute, rule or order to which the petition relates.
  4. A concise statement of the legal authorities if any, and such other reasons upon which petitioner relies.
  5. A concise statement of the **statement of position** or declaratory order sought by the petitioner.
- F. **Service of Petition for Declaratory Order.** A petition for a declaratory order shall be served on the Executive Director by mailing such petition to the Executive Director with a copy of the petition sent on the same date to the Division, the local authority in the county or municipality where the petitioner's retail location or proposed retail location is located, and to the Revenue & Utilities Section of the Colorado Department of Law. Each petition for a declaratory order shall contain a certification that the service requirements of this paragraph have been met.
- G. **Acceptance.** **The Division will determine whether to entertain any petition for a statement of position.** The Executive Director will determine whether to entertain any petition for declaratory order. If **either the Division or** the Executive Director decides it will not entertain a petition **for declaratory order**, it shall promptly notify the petitioner in writing of its decision and the reasons for that decision. Any of the following grounds may be sufficient reason to refuse to entertain a petition:
1. **For a petition for declaratory order,** the petitioner has failed to petition the Division for a statement of position, or if a statement of position has been issued, the petition for declaratory order was filed with the Executive Director more than forty-five (45) days after issuance of the statement of position.
  2. A ruling on the petition will not terminate the controversy nor remove uncertainties concerning the applicability to petitioner of the statute, rule, or order in question.
  3. The petition involves a subject, question or issue which is currently involved in a court action, an administrative action before the state or any local licensing authority, an ongoing investigation conducted by the Division, or a written complaint filed with the Executive Director or Division.
  4. The petition seeks a ruling on a moot or hypothetical question, having no applicability to the petitioner.
  5. Petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to Colo.R.Civ.P. 57, which will terminate the controversy or remove any uncertainty concerning applicability of the statute, rule, or order.
  6. **The petitioner failed to properly serve the petition pursuant to this regulation.**
  7. **The petitioner failed to include information required in paragraph (E) of this regulation.**
- H. **Determination.** If the Executive Director determines that it will entertain the petition for declaratory order, it shall promptly so notify all parties involved, and the following procedures shall apply:
1. The Executive Director may expedite the hearing, where the interests of the petitioner will not be substantially prejudiced thereby, by ruling on the basis of the facts and legal authority presented in the petition, or by requesting the petitioner or the Division to submit

additional evidence and legal argument in writing. Any such request for additional information shall be served on all parties.

2. If the Executive Director determines that an evidentiary hearing or legal argument is necessary to a ruling on the petition, the Executive Director shall issue a Notice to Set to all parties and on the date so set, a hearing shall be conducted in conformance with section 24-4-105, C.R.S.
  3. In ruling on a petition for declaratory order, the Executive Director may take administrative notice of general, technical, or scientific facts within its knowledge, so long as the fact is specified in the record or is brought to the attention of the parties before final decision and every party is afforded an opportunity to controvert the fact so noticed.
  4. Every declaratory order shall be promptly decided and issued in writing, specifying the basis in fact and law for the order.
  5. Any other interested person may seek leave of the Executive Director to intervene in the proceeding and such leave may be granted if the Executive Director determines that such intervention will make unnecessary a separate petition for declaratory order by the interested person.
  6. A declaratory order shall constitute final agency action subject to judicial review pursuant to section 24-4-106, C.R.S.
- I. Record Retention and Reliability. Files of all requests, statements of position, and declaratory orders will be maintained and relied upon by the Division, **unless the statement of position or declaratory order is superseded by a statutory or regulatory change, amended by the Division, or amended or reversed by the state licensing authority**. Except with respect to any material required by law to be kept confidential, such files shall be available for public inspection.

#### **Rule 7-800. Smuggling.**

Basis and Purpose. The statutory authority for this rule includes, but is not limited to, subsections 44-7-104(5)(a), (c) and (d), C.R.S. The purpose of this rule is to address the Division's role in investigations relating to smuggling of cigarettes, tobacco products, or nicotine products.

- A. For purposes of this rule, "smuggling" means the production, import, export, transportation, purchase, sale, or possession of cigarettes, tobacco products, or nicotine products with the intent to evade Colorado tax laws and obligations.
- B. The Division shall consult with the Taxation Division of the Department of Revenue, and other state law enforcement agencies, as needed, to determine what types of documents or information would assist them in their work to prevent smuggling and enforce laws against smuggling.
- C. To the extent the Division, while doing its work to enforce article 7 of title 44, discovers documents or information that may be relevant to enforcement of laws regarding smuggling, the Division may make such documents or information available to the Tax Division of the Department of Revenue, and to other state law enforcement agencies investigating smuggling.

**Rule 7-900. Identification.**

**Basis and Purpose.** The statutory authority for this rule includes, but is not limited to, subsection 44-7-103(1), and 44-7-104(5), C.R.S. The purpose of this rule is to define adequate identification criteria for purposes of demonstrating age to a retailer for the purpose of purchasing cigarettes, tobacco products, or nicotine products.

- A. A retailer shall require an individual who appears to be under fifty years of age to present identification that satisfies the requirements of paragraph (B) before selling the person cigarettes, tobacco products, nicotine products.
- B. A retailer may refuse to sell cigarettes, tobacco products, or nicotine products to any person if the retailer is unable to verify the person is at least twenty-one years of age. Verification of age can be done by either:
  - 1. Presenting adequate identification of age, including any verified digital identification, that is valid and unexpired. Identification of age is adequate if it contains a picture and date of birth and is one of the following:
    - a. Any type of driver's license, or identification card issued by any state within the United States, the District of Columbia, any U.S. Territory, or any foreign country, including Canada or Mexico;
    - b. A United States military identification card or any other identification card issued by the United States government including, but not limited to, a permanent resident card, alien registration card, or consular card;
    - ~~b.C.~~ A passport, or passport identification card; or
    - d. A valid consular identification card from any foreign country.
  - 2. Using a biometric identity verification device.
    - a. For purpose of this rule, "biometric identity verification device" means a device that:
      - 1. Instantly verifies the identity and age of a person by an electronic scan of a biometric characteristic of the person, such as a fingerprint, iris, face, or other biometric characteristic, or any combination of these characteristics;
      - 2. References the person's identity and age against any record of identification described in paragraph (B)(1) of this rule; and
      - 3. Contemporaneously provides the retailer with identity and age verification for the person utilizing the device.
    - b. Prior to using a biometric identity verification device to verify the identity and age of a person for purposes of this paragraph (B)(2), the retailer shall ensure the device provider has systems in place to:
      - 1. Verify the authenticity of any identification records by an electronic authentication process;

2. Verify the identity of, and relevant identifying information about, the person through a secondary, electronic authentication process or set of processes utilizing commercially available data, such as a public records query or a knowledge-based authentication quiz; and
3. Securely link the authenticated record to biometric characteristics contemporaneously collected from the person and store the authenticated record in a centralized, highly secured, encrypted biometric database.

C. It shall be an affirmative defense to any administrative action brought against a retailer for alleged sale to a minor, if the retailer establishes, by a preponderance of the evidence, that:

1. The minor presented fraudulent identification of the type established in paragraph (B)(1) above and the retailer inspected the identification provided, compared the identification to the person presenting the identification, and inspected an identification book issued within the past three years, which contained a sample of the specific kind of identification presented by the minor; or
2. The retailer used and relied upon a biometric identity verification device that indicated the minor was twenty-one years of age or older, in accordance with paragraph (B)(2) of this rule.
3. A retailer asserting the affirmative defense, as described in paragraph (C) of this rule, shall be responsible for obtaining, and providing to the Division, all records necessary to establish that a biometric identity verification device was used as age verification for the transaction in question.